Again he said in another statement:

"The arrangement was made by Ah Siaw 'Chap-eat Chai'. We all cheated the 'Choo-Chu' of Ah Hock. In fact I do not know how much Ah Phing and Ah Siaw got the money from the 'Choo-Chu'. So far I received the cash from Ah Siaw."

In the statement of the third accused he said:

"After obtaining the money from Hock's 'Choo Chu', Hock gave me some coffee money. I was told that Ah Phin took all the money."

We agree that the learned judge should have referred to these parts of the statements and then say in each case what part he used and against whom. He should have also pointed out that where the statements implicate another co-accused he would ignore them.

We, however, found in the judge's judgment the following passage:

"It is clear law that a man's confession is evidence only against himself and not against his accomplices. And a statement made in the absence of an accused person by one of his co-prisoners is not and cannot be evidence against him. In my opinion, the law relating to confessions applies with equal force to caution statements. In *Regina* v. *Rudd* (1948) 32 Cr. App. R. 138 at page 140, Humphreys J. held that 'while a statement made in the absence of an accused person by one of his co-accused cannot be evidence against him, if a co-defendant goes into the witness box and gives evidence in the course of a joint trial, then what he says becomes evidence for all the purposes of the case including the purpose of being evidence against his co-defendant'."

In view of what he stated we must assume that the learned judge in dealing with these caution statements would not make use of any part of the statements which implicated another co-accused.

In reference to the voluntariness of the statements we found that the learned judge had in his judgment stated as follows: —

"I hold that I was satisfied beyond reasonable doubt that all the three accused made the statements voluntarily and that no promise, inducement or threat was made to them or any of them by the police officer or someone in authority."

As we have previously stated the learned judge made a separate finding in reference to each statement made by the accused. In reference to those made by the second accused he came to the following conclusion: —

"Accordingly I rule that the prosecution had satisfactorily discharged the onus of proof that these caution statements of second accused dated 3rd February 1970 had been voluntarily given and that it is admissible evidence. In reference to the statement of third accused after referring to the various allegations made by the accused in the trial within a trial he came to this conclusion:—

'I am satisfied that the accused (that is third accused) made the caution statement to A.S.P. Lim freely and willingly after having been duly cautioned. I hold this caution statement of accused 3 to be admissible in evidence.' "

He rejected the statement made by the first accused on 4th February 1970 and he finally ruled as follows:—

"I rule that the two statements of accused 1, dated 26th January 1970 and 30th January 1970, the two statements of accused 2 on 10th January 1970 and 4th February 1970 and the statement of accused 3 dated 4th February 1970 to be admissible in evidence."

We have stated previously that the learned judge, before admitting these statements, had fully and, with respect, correctly gone into the question of law. On the question of facts he heard the evidence and saw the witnesses give their evidence and dealt fully with it. As an appellate court, particularly where there is no full transcript of the oral evidence, we are in a far less advantageous position to decide all these issues of credibility than the trial judge who had heard the evidence in full and observed the witnesses as they gave it, noting their pauses and hesitations and any physical signs of confidence and embarrassment. We therefore come to the conclusion that we should not interfere with the learned judge's ruling as to voluntariness of these statements.

In our opinion the other grounds of appeal are of no substance.

It was apparent from the whole evidence that it was never disputed by the defence that the complainant and the accused went to the jetty and the purpose for which they did so. The only issue which the learned judge had to decide was this: Was it on the balance of probability true that the boxes which were thrown into the water contained the money and the gold as alleged by the defence? Would a reasonable man on the balance of probability accept the defence version that the two persons who were carrying the boxes containing the gold and cash threw them into the river simply because they saw two men approaching whom they suspected to be policemen? The learned judge rejected this version. We agree with him. Once that version of the defence story is rejected then it would become obvious that the two boxes never contained the gold or cash and that the throwing of the boxes into the water was, to use the words of the learned judge, "a theatrical act put up to impress or rather to fool P.W. 13 into falsely believing that but for the unfortunate intervention of the police the gold bars would be delivered according to plan."

Application of first accused dismissed.

Appeals of the other accused dismissed.

CHOW YOKE PUI v. HONGKONG & SHANGHAI BANKING CORPORATION, MALACCA

[F.C. (Ong C.J. (Malaya) Suffian & Gill F.JJ.) April 27, 1971]

[Kuala Lumpur — Federal Court Civil Appeal No. 103 of 1970]

Partnership — Sale of share of partner — Valuation — Ascertainment of — Guarantee — Claim under.

Contract — Guarantee — Claim under — Extent of liability.

The appellant, plaintiff in the action, and one Tan Tuan Boon, first defendant in the action (now deceased), together with one S.R. Doshi, carried on business as sharebrokers in a firm known as Chua & Co. under a deed of partnership dated June 1, 1956. On June 29, 1967, the appellant gave notice of his retirement from the partnership. On July 14, 1967, the first defendant elected, under clause 17 of the partnership agreement, to purchase the plaintiff's share in the firm "at the net value thereof as ascertained by a single independent valuer if the parties agree upon one or three independent valuers one to be appointed by each of the parties" to the agreement. On December 22, 1967, the res-

pondent bank, second defendants, in the action, guaranteed payment of the purchase price of the plaintiff's share to the extent of $62,475.

The appellant brought two actions, the first against the first defendant and the third partner before the date of guarantee, and the second action against the second defendants/respondents after the date of guarantee. Both actions were in relation to the contract for sale and purchase of the appellant's share in the business.

However, both actions were compromised by an agreement which clearly stipulated that it was being made under the partnership agreement for the purpose of ascertaining the value of the plaintiff's share in the business. A valuer, as required under clause 17 of the partnership agreement, was appointed under this subsequent agreement. The third partner knew and approved of this appointment. The valuer assessed the plaintiff's share at more than the amount guaranteed.

The fundamental issue between the parties depended upon the construction placed upon the words of the guarantee and hence the liability of the second defendants/respondents.

The learned trial judge ([1971] 1 M.L.J. 190) gave judgment for the plaintiff against the first defendant but dismissed his claim against the second defendants/respondents as the agreement between the plaintiff and the first defendant was made subsequent to the guarantee and therefore the plaintiff could not rely upon the guarantee given by the second defendants/respondents in his present claim which was based entirely on the agreement between him and the first defendant and the award made by the adjudicator.

Held, allowing the appeal: (1) the exact amount payable by the first defendant under the contract of sale and purchase was not known at the date of the guarantee. The guarantee itself provided that the amount payable was to be fixed or ascertained by valuation as provided under the partnership agreement. The fact that the subsequent agreement between the plaintiff and the first defendant had not come into existence on the date of the guarantee was therefore entirely immaterial. It was the contract for the sale and purchase of the plaintiff's share in the partnership which was the basis for the guarantee which was limited to $62,475;

(2) a guarantee, like every other contract, must be construed reasonably; it must be construed by the words used, but also with regard to the surrounding circumstances. The guarantee in the present case had to be looked at with reference to the special circumstances under which it was given.

Cases referred to:

(1) *Lloyd's* v. *Harper* (1880) 16 Ch. D. 290, 303.

(2) *Oriental Bank of Malaya Ltd.* v. *N. Subramaniam* [1958] M.L.J. 35.

(3) *Yang Chin Lang* v. *Tan Chong & Sons Motor Co. Ltd.* [1968] 2 M.L.J. 8.

FEDERAL COURT.

Edgar Joseph Jr. for the appellant.

Chan Yew How for the respondent.

Cur. Adv. Vult.

Gill F.J.: The appellant, plaintiff in the action, and one Tan Tuan Boon, first defendant in the action, together with one S. R. Doshi, carried on business as share-brokers in a firm known as Chua & Co. at 21 Jonker Street, Malacca under a deed of partnership dated June 1, 1965.

In the exercise of his powers under clause 16 of the partnership agreement, the plaintiff on June 29, 1967 gave six months' notice of his withdrawal from the partnership as on December 31, 1967. On July 14, 1967 the first defendant elected under clause 17 of the agreement to purchase the share of the plaintiff in the firm "at the net value thereof as ascertained by a single independent valuer if the parties agree upon one or three independent valuers one to be appointed by each of the parties" to the agreement. On December 22, 1967 the respondent bank, second defendants in the action, guaranteed payment of the purchase price of the plaintiff's share to the extent of $62,475

The guarantee furnished by the second defendants was contained in their letter dated December 22. 1967 addressed to the plaintiff in the following terms: —

"*WHEREAS* Chow Yoke Pui has on the 29th day of June, 1967 given notice of his intention to retire from the partnership business of Stock and Share-Brokers carried on under the firm name or style of 'Chua & Co.' at No. 21, Jonker Street, Malacca.

AND WHEREAS Tan Tuan Boon one of the two continuing partners of the said partnership on the 14th day of July, 1967 by his letter to the said Chow Yoke Pui exercised his option to buy the share and interest of the said Chow Yoke Pui namely 62,475/85 shares of and in the said partnership at the price to be fixed or ascertained by valuation as provided under the Partnership Agreement made on the 1st day of June, 1965.

AND WHEREAS pending the ascertainment of the purchase price as aforesaid and in order that the partnership's continued running may be facilitated, it has been agreed between the said Chow Yoke Pui and Tan Tuan Boon that the latter should provide the former with a Banker's Guarantee to the extent of the sum of Dollars Sixty two thousand four hundred and seventy five ($62,475.00).

NOW WE HEREBY GUARANTEE that the purchase price to be ascertained or fixed as aforesaid but not exceeding the sum of Dollars Sixty two thousand four hundred and seventy five ($62,475.00), shall become payable to you by us in the event of Tan Tuan Boon failing to pay the said purchase price to you within one (1) month from date of such ascertainment of purchase price as aforesaid.

IT IS UNDERSTOOD that the maximum liability herein is only the sum of Dollars Sixty two thousand four hundred and seventy five ($62,475.00) and the purchase price so ascertained as aforesaid will only be paid to you in exchange for a valid assignment of your share and interest in the said partnership to Tan Tuan Boon or his nominee or nominees and on your signing the necessary Business Registration forms effecting such changes in the partnership."

On November 30. 1967 the plaintiff had filed an action in the High Court at Malacca, being Civil Suit No. 210 of 1967, against the first defendant and Doshi for, *inter alia,* specific performance of the agreement arising upon the first defendant's exercise of the option to buy the plaintiff's share. On February 5, 1968 he filed yet another action in the same court, being Civil Suit No. 16 of 1968, against the first defendant for, *inter alia,* an order that the first defendant do forthwith authorize Evatt & Co. to carry out the valuation of his share in the partnership and that for this purpose the first defendant do provide Evatt & Co. with access to the account books of the firm. Both suits, however, were compromised by an agreement dated March 14. 1968 between the plaintiff and the first defendant.

Doshi was not a party to the agreement but he subscribed to the letter which all three of them wrote to Evatt & Co. on the same day appointing Evatt & Co. irrevocably to examine the accounts of the partnership and to assess the value of its assets, including goodwill,

as provided in the partnership agreement of June 1, 1965, after deduction of liabilities as at December 31, 1967, and instructing them to supply a copy of their valuation and report as soon as practicable to the parties to the sale agreement and to Mr. Koh Kim Leng. The letter contained an undertaking to provide Evatt & Co. with full access to the company's books and accounts relative to the partnership and to give all necessary information, explanations and assistance required by them from time to time.

The material parts of this agreement, which has been referred to as the subsequent agreement, are as follows: —

"AND WHEREAS it is necessary under the partnership agreement to value the share of the second party.

...

1. The parties hereto irrevocably appoint Evatt & Co. Chartered Accountants, Malacca, to examine the accounts of the partnership and to assess the value of its assets including goodwill, as provided in the partnership agreement after deduction of liabilities as on the 31st December, 1967.

...

4. The valuation and report made by Evatt & Co. will as soon as practicable be supplied to the parties hereto and to the adjudicator, and within one week of receipt thereof by the respective parties hereto each party will submit in writing to the adjudicator any comments and or representations they desire to make upon the valuation, accounts and report.

5. The parties hereto hereby appoint Koh Kim Leng Esq. to be the adjudicator to adjudicate upon the valuation and report of Evatt & Co. after considering the comments and representations of the parties, and he may in his absolute discretion summon before him either collectively or separately the parties hereto to resolve any difficulties which may appear from the comments and representations made by the parties under the foregoing paragraph.

6. The adjudicator will as soon as practicable give his award i.e., the final figure payable in respect of the share of the 2nd party to be paid by the 1st party to the 2nd party within one month from the date of such award and any other directions, and his award will be final and binding on both parties hereto, and no appeal shall lie therefrom."

Koh Kim Leng issued his award on December 5, 1968. On December 10, 1968, Messrs. Skrine & Co. wrote to the second defendants:

"We have been requested by Mr. Chow Yoke Pui to refer to the guarantee given by you in his favour dated 26th December, 1967. The purchase price payable to Mr. Tan Tuan Boon was ascertained on the 5th instant with the result that the purchase price has to be paid by the 5th January 1969. We are asked to inform you of this in view of your potential liability under the guarantee in the event of the purchase price not being paid."

They then wrote to Messrs. Allen, Gledhill & Ball, solicitors for the first defendant, on December 16, 1968:

"We have just received from Mr. Koh Kim Leng his valuation of the shares. As this valuation is dated the 5th December, 1968 it seems that your client is liable to pay the moneys to our client on or before the 5th January 1969 with interest from the 1st January, 1968 at the rate of 5% per annum."

In reply to the letter of December 10, 1968 to the second defendants, Messrs. Allen, Gledhill & Ball on December 28, 1968 wrote to Messrs. Skrine & Co.:

"Our clients are agreeable to paying you the sum of $62,475.00 upon the condition precedent referred to in the last paragraph of the guarantee given by our clients to your client dated the 22nd December, 1967 being satisfied."

On December 31, 1968 Messrs. Skrine & Co. replied to Messrs. Allen, Gledhill & Ball to say:

"We thank you for your letter of the 28th December. The first condition referred to has already been performed. In your Statement of Claim in Civil Suit No. 210 of 1967 in paragraph 7 you maintained that a contract was concluded on the 14th July 1967 for the sale of the shares in question. Our client has never disputed that such a contract was concluded and we cannot see what other document is necessary. We do not consider that there is any need for the firm to file registration forms by virtue of the fact that they are required to pay dues to the Stock Exchange. Assuming however, that we were wrong on this, our client would execute any necessary business registration forms as soon as they are submitted to him. The delay on the part of Mr. Tan Tuan Boon in submitting the form cannot excuse your clients from making payment and our instructions are to file immediate proceedings in the event of Mr. Tan Tuan Boon not making the payment due on the 5th January 1969."

It is common ground that the plaintiff had 62,475 shares in Chua & Co. and that Koh Kim Leng had valued each share at $2.44, so that the value of the plaintiff's share in the firm was $152,439. The first defendant having failed to pay the amount on or before January 5, 1969, the plaintiff took out a writ in the action against both defendants on March 4, 1969, which in due course came on for trial before Sharma J.

The first defendant having died after the conclusion of the trial but before judgment was given, his widow Soon Kuo Hsiang was appointed to represent the estate. Apart from the value of his share in the firm, the plaintiff had also claimed as against the first defendant a sum of $7,621.95 being interest on the purchase price at 5% per annum from January 1, 1968 to January 5, 1969. This part of his claim, however, was disallowed on the ground that the first defendant was liable to pay the purchase price only on or before January 5, 1969. In the event, judgment was given for the plaintiff against the estate of the first defendant for $152,439 with interest thereon at the rate of 5% per annum from January 5, 1969. But the claim against the second defendants, which, of course, was limited to the extent of their liability, was dismissed.

It is against the dismissal of his action against the second defendants that the plaintiff has brought this appeal.

One of the issues agreed by the parties to be tried as a preliminary issue was whether Koh Kim Leng was to be a valuer or an arbitrator. The learned trial judge, having considered this question in the light of numerous decided cases which are mentioned in his grounds of judgment, came to the conclusion that in the circumstances of this case the intention of the parties was to appoint Koh Kim Leng as a valuer and not as an arbitrator. This, to my mind, was crystal clear from the partnership agreement as well as the subsequent agreement between the parties, quite apart from the numerous authorities on which the learned trial judge based his conclusion.

Another issue to be tried was whether the award made or purported to be made by Koh Kim Leng was final. This issue arose from paragraph 5 of the second defendants' statement of defence to the effect that the

adjudicator had failed to make an award as required under the agreement dated March 14, 1968. It is to be observed that clause 6 of that agreement required the adjudicator to "give his award *i.e.*, the final figure payable in respect of the share of the second party to be paid by the first party to the second party". It was argued that Koh Kim Leng had not stipulated this final figure. Obviously, there was no merit in this rather childish argument because, as the learned judge rightly pointed out, what remained to be done was only a question of arithmetic.

An objection was also taken to the award on the ground that the valuation stated therein was said to be as on December 31, 1968 and not December 31, 1967. The learned judge found no merit in that objection, as in his opinion the year 1968 instead of 1967 appeared in the award merely by a typing error. Evatt & Co. had given their valuation as on December 31, 1967 which was the material date under the agreement of March 14, 1968, and the basis of the adjudicator's award was the valuation of Evatt & Co. On December 5, 1968 the adjudicator could not possibly have arrived at the value of each share of Chua & Co. as on December 31, 1968.

The main defence of the second defendants was that the action against them was premature in that the two conditions precedent for their liability to arise under their letter of guarantee had not been fulfilled. These two conditions precedent were said to be (1) that the purchase price payable by the first defendant had to be ascertained under the partnership agreement, and (2) that the purchase price so ascertained was to become payable in exchange for a valid assignment of the plaintiff's share and interest in the said partnership to the first defendant or to his nominee or nominees and on the plaintiff signing the necessary business registration forms effecting such changes in the partnership.

The learned judge found no substance in the contention of the second defendants as regards the non-fulfilment of this second condition precedent, because it was clear that the plaintiff was at all material times ready and willing to execute all the necessary documents which he was required to execute, and payment to the plaintiff and the execution by him of such documents were to be concurrent acts. The second defendants have not cross-appealed against this finding.

With regard to the first condition precedent, it is to be observed that it was never pleaded by the second defendants that, as they were not a party to the agreement dated March 14, 1968 between the plaintiff and the first defendant, they were not bound by the adjudicator's award, nor had they specifically pleaded that their liability under the guarantee was discharged by reason of the variation in the method of ascertaining the value of the plaintiff's share in the partnership business. What they pleaded was that the action against them was premature because the purchase price payable by the first defendant had not been ascertained as provided under the partnership agreement.

In this connection, it was contended for the second defendants in the court below that in the fixing of the purchase price there was a departure from clause 17 of the partnership agreement by reason of the fact that Doshi did not join in the appointment of Koh Kim Leng as an adjudicator, it being conceded that, if Doshi had been made a party to the agreement of March 14, 1968, the second defendants would have had no defence to the action. The learned judge agreed with that contention, and therefore dismissed the action against the second defendants. His reasons for the dismissal are to be found in the following passage from his grounds of judgment: —

> "The payment that the bank guaranteed was the payment which was fixed or ascertained by the method provided in the partnership agreement dated 1st day of June 1965. On the date this guarantee was given the agreement between the plaintiff and the 1st defendant had not come into existence. I am therefore of the view that the plaintiff cannot rely upon the guarantee given by the 2nd defendant in his present claim which is based entirely on the agreement between him and the 1st defendant and the award made by the adjudicator. The 2nd defendant at no stage extended the terms of its guarantee to include the method of ascertaining the purchase price other than that contemplated in the partnership agreement dated the 1st day of June 1965."

I regret to say, with respect, that I do not agree with the judge's reasoning for the dismissal of the action against the second defendants. In my judgment, it was not necessary for Doshi to be made a party to the subsequent agreement when he was in no way interested in the contract of sale and purchase between the plaintiff and the first defendant. This subsequent agreement merely provided for the implementation of the contract of sale and purchase which in turn flowed from the partnership agreement.

The requirement for the appointment of three independent valuers, one to be appointed by each of the parties to the partnership agreement, or of a single valuer to be appointed by all three of them, cannot reasonably be said to apply where, as here, one of the two remaining partners exercised the option to purchase the share of a retiring partner. This would seem clear from clause 17 of the partnership agreement itself. The need for the appointment of an adjudicator by all three could only arise if all three of them were involved in the contract of purchase and sale. Even assuming that it was necessary for all three of them to make the appointment, that condition was fulfilled because Doshi in fact had signed the letter whereby the appointments of Evatt & Co. and Koh Kim Leng were made. Clause 17 of the agreement did not require the three parties to enter into a formal agreement for the appointment of an adjudicator.

It is common ground that the exact amount payable by the first defendant under the contract of sale and purchase was not known on the date of the guarantee. The guarantee itself provided that the amount payable was to be fixed or ascertained by valuation as provided under the partnership agreement. The fact that the subsequent agreement between the plaintiff and the first defendant had not come into existence on the date of the guarantee was therefore entirely immaterial. It was the contract for the sale and purchase of the plaintiff's share in the partnership which was the basis for the guarantee which was limited to $62,475.

The fact that the plaintiff chose to bring two separate actions to enforce specific performance of the contract did not render the guarantee invalid. Both actions were compromised by the agreement of March 14, 1968. That agreement referred specifically to the partnership agreement, and it was made because it was "necessary under the partnership agreement to value the share of the second party". The agreement, although it came into existence by way of a compromise of the two civil actions, was nothing more than an agreement between the plaintiff and the first defendant to appoint Koh Kim Leng as an adjudicator as required under clause 17 of the partnership agreement. How can it then be said that Koh Kim Leng was not appointed as an adjudicator as required under the partnership agreement?

It seems clear to me that there was in fact no departure from clause 17 of the partnership agreement in the method of ascertaining the plaintiff's share in the partnership. The learned judge's reasoning that the second defendant had at no stage extended the term of his guarantee to include the method of ascertaining the purchase price other than that contained in the partnership agreement dated the 1st day of June, 1965 therefore falls to the ground.

The guarantee given by the second defendants was in relation to the amount payable by the first defendant to the plaintiff under their contract of sale and purchase. The parties to that contract appointed Koh Kim Leng to ascertain the amount payable under the contract, as they were entitled to do under clause 17 of the partnership agreement. It was not a term of the guarantee that the guarantors should join in making the appointment of an adjudicator. The adjudicator having duly made his award, the first defendant became liable to pay the amount of the award. If the principal debtor became liable to pay, how could the guarantors escape liability to the extent of the amount guaranteed by them? In the circumstances, I fail to see how it could be said that the plaintiff could not rely upon the guarantee given by the second defendants.

The learned judge says in his grounds of judgment that the partnership agreement dated April 1, 1965 (A1) and the agreement A89 appointing Koh Kim Leng as the adjudicator evidence two separate and distinct transactions. Of course, they do. But what the second defendants guaranteed was not the partnership agreement but the contract of sale and purchase of July 14, 1967 which flowed from the partnership agreement. The two transactions here were the contract of purchase and sale and the subsequent agreement appointing Koh Kim Leng as an adjudicator. They were undoubtedly two separate transactions, but they were not distinct transactions in the sense that they had no bearing on each other. The two transactions, in fact, were inter-connected. The first transaction flowed from the partnership agreement, and the second transaction flowed from the first transaction. There were thus three separate transactions, but they were connected with each other. The liability of the first defendant arose under those three inter-connected transactions, and it was this liability which was guaranteed by the second defendants. In upholding the liability of the first defendant, the learned judge should therefore have gone on to hold that the second defendants were equally liable.

The plaintiff's claim against the second defendants in the present action was based on a guarantee The fundamental issue between the parties depended upon the construction to be placed upon the words of that guarantee. A guarantee, like every other contract, must be construed reasonably; it must be construed by the words used, but also with regard to the surrounding circumstances (per Fry J. in *Lloyd's* v. *Harper*;[1] also see *Oriental Bank of Malaya Ltd.* v. *N. Subramaniam*[2] and *Yang Chin Lang* v. *Tan Chong & Sons Motor Co. Ltd.*[3]) The guarantee in the present case speaks for itself. It must be looked at with reference to the special circumstances under which it was given.

Now, to recapitulate, what were the surrounding circumstances of this case? The plaintiff was one of three partners in a partnership business. He retired from the partnership, and the defendant elected to purchase his share the value of which was to be ascertained, in accordance with the provisions of the partnership agreement. Pending ascertainment of the purchase price, and in order to allow the business to continue, the second defendants guaranteed payment of the purchase price to the extent of $62,475. The guarantee remained in force until the amount payable by the first defendant was ascertained. The plaintiff brought two actions, the first against the first defendant and the third partner before the date of guarantee, and the second against the first defendant after the date of guarantee. Both actions were in relation to the contract for the sale and purchase of the plaintiff's share in the business. They were compromised by an agreement which clearly stipulated that it was being made under the partnership agreement for the purpose of ascertaining the value of the plaintiff's share in the business. A valuer, as required under clause 17 of the partnership agreement, was appointed under this subsequent agreement. The third partner knew and approved of this appointment. The valuer valued the plaintiff's share at more than the amount guaranteed. In those circumstances, I cannot see how the second defendants could possibly escape liability.

I would therefore allow this appeal. There will be judgment against the second defendants for a sum of $62,475 with interest thereon at 6% per annum from today to the date of payment, with costs both here and in the court below.

Ong C.J. (Malaya) and **Suffian F.J.** concurred.

Appeal allowed.

Solicitors: *Joseph & Son; Allen, Gledhill & Ball.*